Filed 2/17/09 In re D.L. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re D.L., a Person Coming Under the Juvenile Court Law.	B207185 (Los Angeles County Super. Ct. No. CK70363)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. M.M., et al., Defendants and Appellants.	

APPEAL from orders of the Superior Court of Los Angeles County. Marilyn Kading Martinez, Juvenile Court Referee. Affirmed.

M.M., in pro. per., for Defendant and Appellant, Mother.

G.L., in pro. per., for Defendant and Appellant, Father.

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Appellants M.M. (mother) and G.L. (father) appeal from the juvenile court's jurisdictional and dispositional orders pertaining to their minor son. After appellants' counsel each filed letters pursuant to *In re Sade C.* (1996) 13 Cal.4th 952 indicating they were unable to file briefs on appellants' behalf, we advised appellants of their right to file papers addressing issues they wished us to consider, and they have done so. In their combined brief, appellants raise numerous challenges to the court's orders. We find no merit to any of these challenges and therefore affirm the court's orders.

FACTUAL AND PROCEDURAL BACKGROUND

One-year-old D.L. first came to the attention of the Los Angeles County Department of Children and Family Services (the department) on October 10, 2007 when the Los Angeles Police Department responded to a call of domestic violence. Mother's stepfather called the police after mother sent her mother a text message saying, "I need help we got hurt by g call me n the am" and a picture of mother's beaten face. The police initially had trouble locating appellants and the minor. Following a helicopter pursuit, appellants and the minor returned home. While speaking with the police on her cell phone, mother threatened to commit suicide if the minor was taken away. Mother resisted orders by the police to exit the house and was taken into custody by force. Mother was arrested on a charge of child endangerment and father was arrested on a charge of cohabitant abuse. Father was already on probation from a 2006 conviction of abusing mother, a restraining order had been issued ordering him to stay away from mother until November 2009, father had been convicted of cohabitant abuse in 2003, and the police had investigated violence in the home on three prior occasions. The minor was placed in foster care. The day after the arrest, the district attorney's office declined to prosecute mother.

The social worker interviewed mother at the police station. Mother's left eye was severely swollen shut and oozing blood and she had smaller bruises under her eye. Mother denied sending the text message or being abused by father, claiming that she had gotten her injuries when the minor threw a Lego at her and she had tripped over his toys

during the night when he had trouble sleeping. The social worker also interviewed father at the police station. Father, who had a black eye, denied abusing mother and also claimed that the minor had thrown a toy at mother, stating that the minor had used his "mind powers" to pick up the toy. Father admitted using drugs heavily in the past, "everything from the nose to the needle to the bottle," but stated that he had been clean for three years. The social worker also interviewed the maternal grandmother, who stated that appellants had a history of domestic violence and that mother had stated that she was holding the minor when father hit her. The social worker interviewed the maternal cousin, who also received mother's text message. Mother told the cousin that when she texted that "g" had hurt her, she just meant the "ground." Mother admitted to the cousin that she had hit father.

On October 15, 2007, the department filed a petition on the minor's behalf pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b).[1] In counts 1 and 2, the petition alleged that appellants had a history of domestic violence and engaging in violent altercations in the minor's presence, that father struck mother's face while she was holding the minor and that mother struck father's face in the presence of the minor, that the parents had been arrested on October 10, 2007, that father had two prior convictions for cohabitant abuse and that the violent altercations endangered the minor's physical and emotional health and placed him at risk of harm. The petition also alleged that father had a three-year history of substance abuse and was a current user of marijuana, which rendered him incapable of providing regular care for the minor. Counts 3 and 4 alleged that appellants had marijuana in the home within access of the minor and that mother had mental and emotional problems, including suicidal ideation, that rendered her unable to care for the minor.

At the detention hearing on October 15, 2007, the court detained the minor, ordered the department to provide appellants with reunification services and to

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[1] All further statutory references shall be to the Welfare and Institutions Code, unless otherwise noted.

investigate relatives for possible placement, and allowed appellants separate monitored visits with the minor.

In its November 2007 jurisdiction and disposition report, the department reported that its investigator had interviewed mother in the presence of her attorney. Mother continued to deny any physical abuse by father or by herself and repeated her story that she had been injured by tripping over toys. She claimed the social worker had lied in the detention report by stating that mother had reported that the minor had thrown a Lego at her and by stating that mother had sent the text message to the maternal cousin. Mother also denied that father currently used drugs. The department's investigator also interviewed father, who denied physically abusing mother. Father admitted using heroin for two years, but denied having used drugs for the past three years. The department reported that father tested positive for marijuana on October 25, 2007, but tested negative on October 31, 2007. The investigator also interviewed the maternal cousin, who repeated that she had gotten mother's text message and that mother claimed the "g" in the message stood for "ground" and that mother denied any physical abuse by father. The department also reported that the minor had been placed with the paternal aunt, that appellants were having consistent and appropriate weekly visits with the minor, and that mother was attending counseling services and parenting classes and receiving treatment for attention deficit hyperactivity disorder (ADHD). Father had not enrolled in any classes or services. The department recommended continued removal of the minor from appellants' custody.

At the November 16, 2007 pretrial resolution conference, the court gave the department discretion to allow mother to reside with the minor in the paternal aunt's home. The court continued the matter, finding "extenuating circumstances" to extend the case beyond the statutory deadline because the parties had been unable to resolve the case and January 15, 2008 was the earliest date available for a hearing.

In its January 2008 interim report, the department reported that the minor had adjusted well to the home of his paternal aunt and that he had begun unmonitored weekend visits with the maternal grandparents. Appellants were having weekly

monitored visits with the minor that appeared to go well. Mother was receiving individual counseling and treatment for ADHD, attending domestic violence counseling and parenting classes. Father was still not participating in any services. The department recommended that the minor remain in his placement and that appellants' visits with him be monitored.

At the January 15, 2008 hearing, the department's attorney asked for a continuance on the bases that she was ill and had a doctor's appointment an hour later and that mother's attorney had just received a CD from the LAPD that all counsel would have to listen to together. When the court asked if there were any objections to the continuance, father's attorney stated "no" and mother's attorney simply asked that the continuance be short. The court denied mother's request for unmonitored visits with the minor in light of mother's denial of domestic violence and the absence of any evidence that she was making substantial progress on the issue of domestic violence. After a discussion off the record, the matter was continued to February 26, 2008.

In its February 2008 interim report, the department reported that mother had stopped attending parenting classes and counseling services on the basis that they were not court ordered. Appellants were continuing to have weekly monitored visits with the minor. In a separate information for court officer, the department reported that the paternal aunt had informed the social worker that appellants had visited the minor together, despite the court order that visits be separate and the restraining order against father, and that mother did not behave appropriately with the minor in that she refused to pick him up while he was crying and made him say "sorry, thank you and please" before allowing him to do something.

At the February 26, 2008 continued hearing, father's attorney informed the court that father was dissatisfied with his current attorney and requested a brief continuance to reassign the case to another attorney in the firm. There were no objections and the matter was continued to March 13, 2008. At the hearing on March 13, 2008, the court indicated that it had been conferring with counsel and that "one of the attorneys has a very significant medical need and has a medical appointment that cannot be missed, and that is

good cause to continue." Attorneys for both appellants objected to the continuance. The hearing was continued to March 25, 2008.

At the continued hearing on March 25, 2008, appellants' attorneys made numerous objections to admission of the department's documentary evidence. The court ruled that all of the department's evidence was admissible except a printout of mother's text message and the cell phone photograph that had been attached to the police report. With respect to objections to the hearsay statements by mother's relatives contained in the department's reports, the court continued the matter two days for the purpose of determining whether the hearsay declarants needed to be brought to court.

At the continued hearing on March 27, 2008, the court indicated that it had conferred with counsel and that the maternal grandparents, who lived in Washington, had not responded to calls by the department's attorney, nor had the maternal cousin responded to calls by mother's attorney. The court concluded that these declarants were unavailable witnesses and noted that the court could not make a decision based solely on their hearsay statements.

Mother was not present at the next hearing on April 3, 2008. Her attorney represented that mother was too ill to come to court and requested a brief continuance. The matter was continued to April 10, 2008.

At the April 10, 2008 hearing, the parties stipulated that if the department's investigator were called to testify, she would testify that the facility where father received his positive drug test result was not one normally used by the department and the investigator was uncertain whether the facility was approved by the department. After hearing the arguments of counsel, including the minor's attorney who agreed that the petition should be sustained, the court sustained counts 1 and 2 of the petition and dismissed counts 3 and 4. With respect to count 1, the court found appellants' explanation of mother's injuries not credible, that father has a history of domestic abuse and that he was violating the restraining order. The court stated that it was not basing its ruling on any hearsay statements by mother's relatives. With respect to count 2, the court found there was nothing to indicate that father's positive drug test was inaccurate. As to

disposition, the court ordered that visits with the minor continue to be monitored, that the department provide reunification services, that appellants participate in individual and couple's counseling and that father participate in a drug rehabilitation program with random drug testing.

DISCUSSION[2]

I. Right to Confront and Cross-Examine Witnesses.

Appellants contend that their due process rights were violated because they did not have the opportunity to confront and cross-examine the case workers who prepared the department's reports. It is true that a parent in a dependency proceeding has a due process right to confront and cross-examine persons who prepared reports or documents submitted to the court by the petitioning social services agency, and the witnesses called to testify at the hearing. (*In re Matthew P.* (1999) 71 Cal.App.4th 841, 849; *Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1513; Cal. Rules of Court, rule 5.534(k)(1)(B).)

But here appellants did not seek to take the testimony of the preparers of the reports. Appellants refer us to four letters sent by mother's attorney to the department's attorney requesting the department to make available for cross-examination certain witnesses, but none of these witnesses include the preparers of the reports. Although the court ordered the department's investigator, who prepared the November 2007 jurisdiction and disposition report, to be on call at the request of father's attorney, father never attempted to take the investigator's testimony. At the combined jurisdictional and dispositional hearing conducted on April 10, 2008, father's attorney specifically stated that he did not intend to call the department's investigator or anyone else to the stand. At the same hearing, when asked if she had any evidence to present, mother's attorney

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2 We deny mother's request to take judicial notice of documents not presented to the juvenile court.

presented only documentary evidence and then rested. Thus, we find no merit to appellants' contention that their due process rights were violated.

II. Continuances of Hearing.

Appellants next contend that there was no good cause for continuing the combined jurisdictional and dispositional hearing beyond the statutory deadline. Section 352, subdivision (a) provides that continuances shall be granted only upon a showing of good cause and when not contrary to the interest of the minor. Subdivision (b) provides that if a minor has been removed from his parents' custody, no continuance shall be granted that would result in the dispositional hearing being completed longer than 60 days after the detention hearing, unless the court finds that there are exceptional circumstances requiring such a continuance, and that in no event shall the court grant continuances that would cause the dispositional hearing to be completed more than six months after the detention hearing. Subdivision (c) provides that where the parent is represented by counsel and no objection is made to an order continuing such a hearing beyond the statutory deadline, the absence of such objection shall be deemed a consent to the continuance.

When the court first continued the combined jurisdictional and dispositional hearing such that the dispositional hearing would not take place within 60 days of the detention hearing, there was no objection by any party. There was also no objection by any party when the court continued the hearing for a second time at the request of the department's attorney on the grounds that she was ill and all counsel needed to listen to a police CD together. The hearing was next continued at the request of father, who wanted a new attorney. When the court again continued the hearing due to the illness of the department's attorney, appellants objected for the first time. The court found the attorney's illness to constitute good cause for the continuance and continued the hearing less than two weeks. The hearing was subsequently continued again at the request of mother, on the ground that she was ill. None of the parties objected to this continuation. In light of the fact that mother obtained a continuance of the hearing for the same reason

the department's attorney had obtained an earlier continuance, we find appellants' contention that there was no good cause for continuance of the hearing to be disingenuous. Moreover, we note that the combined jurisdictional and dispositional hearing on April 10, 2008 took place less than six months from the detention hearing on October 15, 2007.

III. Sufficiency of the Evidence.

Appellants contend there was insufficient evidence to sustain the petition because there was no indication that their son had suffered physical abuse. When the sufficiency of the evidence to support a juvenile court's finding or order is challenged on appeal, the reviewing court must determine if there is substantial evidence, contradicted or uncontradicted, that supports it. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) "If there is any substantial evidence to support the findings of the juvenile court, a reviewing court must uphold the trial court's findings. All reasonable inferences must be drawn in support of the findings and the record must be viewed in the light most favorable to the juvenile court's order. [Citation.]" (*In re Jeannette S.* (1979) 94 Cal.App.3d 52, 58.)

Appellants cite to section 355.1, subdivision (a), which provides that where the court finds, based upon competent professional evidence, that an injury sustained by a minor is of a nature as would ordinarily not be sustained except as the result of the unreasonable or neglectful acts or omissions of the parent, that finding shall be prima facie evidence that the minor is a person described by subdivision (a), (b), or (d) of section 300. Appellants argue that because their son had no signs of any physical abuse, there was no basis for the court to sustain the petition.

But appellants' reliance on section 355.1 is misplaced. That section simply provides that if a minor is found to be injured as described, that finding is prima facie evidence that the minor comes within section 300. But a minor can be adjudged a dependent of the court in the absence of signs of physical abuse. A juvenile court may determine that a child is subject to the court's jurisdiction under section 300,

subdivision (a), if it finds that "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian." And a juvenile court may determine that a child falls within its jurisdiction under subdivision (b) if it finds that "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . ."

Here, there was substantial evidence that the minor was at risk of serious physical harm as a result of appellants' domestic violence. Father had a criminal history of domestic abuse, and at the time of the minor's detention, father was on probation for such abuse and was in violation of the restraining order. As the court aptly found, appellants' explanation that mother had received the severe injuries to her face as a result of tripping over toys was simply not credible. There was evidence that the minor was in his mother's arms when she was struck and was at substantial risk of suffering similar physical harm.

IV. Verified Petition.

Appellants point out that section 332 requires a petition to be verified and to contain a concise statement of the facts supporting the court's jurisdiction and that section 333 permits a court to dismiss an unverified petition without prejudice. To the extent appellants are arguing that the petition in this case was not verified and did not contain a concise statement of the facts, they are simply wrong.

V. Placement of the Minor.

Appellants seem to be complaining that the minor should have been placed with relatives upon his removal from their custody instead of into foster care. They cite to section 309, which provides that upon delivery of a child to a social worker, the social worker shall immediately investigate the circumstances of the child and his removal and attempt to maintain the child with the child's family through the provision of services.

The detention report details the department's reasons for not immediately placing the minor with relatives. Appellants simply claim that the reasons provided were "falsified" without elaborating. We give no credence to such a claim. Moreover, as even appellants note, by the time of the second court hearing, the minor had been placed with his paternal aunt, with whom he resided for the duration of the proceedings.

VI. Release of Minor to Mother.

Appellants contend that the minor should have been released to mother's custody within 48 hours, presumably of his removal, or at the very least at the detention hearing. Appellants cite to section 313, which provides that whenever a minor is taken into custody by a peace officer, such minor shall be released within 48 hours after having been taken into custody, excluding nonjudicial days, unless within said period of time a petition to declare him a dependent child has been filed.

Here, the minor was taken into custody by a peace officer on Wednesday, October 10, 2007, the petition was signed on Friday, October 12, 2007, and was filed on Monday October 15, 2007. It is not clear from the record if the department attempted to file the petition on Friday. In any event, section 313 does not prohibit continued detention of a minor after a petition has been filed, even if the petition is untimely. Once the petition is filed, section 315 controls and requires the juvenile court to hold a detention hearing. (*Los Angeles County Dept. of Children's Services v. Superior Court* (1988) 200 Cal.App.3d 505, 508.)

Appellants also argue that the minor should have been returned to mother once the district attorney's office declined to prosecute her for child endangerment. But as the juvenile court aptly explained: "The purpose of the criminal courts and the district attorney's office is to prosecute people for criminal conduct. The purpose of the dependency court is to protect children. The burdens of proof are significantly different." Thus, the fact that a parent is not prosecuted for a crime does not necessarily mean that the child does not come within the juvenile court's jurisdiction. Many children are declared dependents of the juvenile court whose parents are not charged with any crime.

VII. Father's Criminal History.

Father contends that his criminal history is irrelevant because it predated the minor's birth and therefore does not support a finding that the minor was at substantial risk of harm. The juvenile court disagreed and so do we.

Not only did father have prior convictions for cohabitant abuse against mother, but he was on probation for his latest such conviction at the time of the minor's detention and was in violation of a restraining order by being in the same house as mother. In *In re Basilio T.* (1992) 4 Cal.App.4th 155, 169, the court concluded that past occurrences of violent altercations were sufficient to show a pattern of violent behavior that had not been corrected. "[D]omestic violence in the same household where children are living *is* neglect; it is a failure to protect [children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect *causes* the risk." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.)

VIII. Participation in Drug Classes and Testing.

Father challenges that portion of the dispositional order requiring him to undergo drug rehabilitation and random drug testing. Father claims there is no evidence that he currently uses drugs. He is mistaken. As father notes, the court initially relied on a hearsay statement by an unidentified police officer in which father claimed to have used drugs the night before his arrest. But contrary to father's assertion, the court did not rely on this statement once it was pointed out that the court had previously ruled this statement inadmissible. The court then noted that father had admitted to the social worker having previously used drugs heavily and that father had a positive drug test for marijuana on October 25, 2007. Although father challenged the accuracy of this test, the court found there was no evidence that the test was inaccurate. While the evidence supporting father's current drug usage was not overwhelming, it was nonetheless sufficient to support the court's dispositional order.

DISPOSITION

The juvenile court's jurisdictional and dispositional orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

CHAVEZ